



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1994

Ms. Helen M. Gros
Senior Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-606

Dear Ms. Gros:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26794.

The City of Houston has a request for information it has pertaining to a particular incident involving a city police officer and the subsequent investigation of possible misconduct on the part of the officer. You indicate that the city has furnished some of the requested information to the requestor but wishes to withhold the remainder of the requested information under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with section 143.089 of the Local Government Code which applies in municipalities which have adopted the civil service provisions of chapter 143.

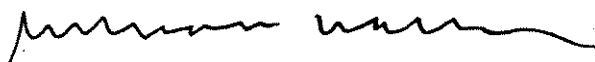
Section 143.089 requires the maintenance of a personnel file for each police officer by the director of the civil service commission, including material related to sustained allegations of misconduct by a police officer, but specifically prohibits inclusion therein of information related to unsustained allegations of misconduct. Local Gov't Code § 143.089(a)(2), (b). Subsection (g) permits the department to maintain its own file but prohibits release of any information therein, instead requiring the department to refer requestors of information to the civil service director. You represent that it is information in the department's file which is at issue here.

We understand that part of the information you seek to withhold is information maintained in the department file relating to an unsustained allegation of misconduct by the officer. The other information you seek to withhold appears to be statements of witnesses relating to investigations of the conduct of the officer in question on two other occasions.¹ Material included with your request indicates that the allegations of misconduct on one of these occasions were sustained, but it is unclear what disposition was made with regard to the allegations relating to the other occasion. In any case, we agree that this information, to the extent it is contained only in the department's own personnel file, must also be withheld under section 143.089(g). *See also id.* § 143.1214 (department investigatory records pertaining to unsustained allegations of misconduct to be released only to another law enforcement agency or fire department). *See generally City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

However, please note that if the department takes disciplinary action against a police officer, section 143.089(a)(2) requires that the department transfer "any letter, memorandum, or document relating to" the disciplinary action to the city civil service commission. These records may not be withheld under section 552.101 of the Government Code but must be released by the civil service commission under section 143.089(f) of the Local Government Code unless some provision of the Open Records Act or other law permits the commission to withhold the documents. Open Records Decision No. 562 (1990); *see also* Local Gov't Code § 143.089(f). Again, the department is required to refer any person who requests information maintained in an officer's personnel file to the civil service commission.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



William Walker
Assistant Attorney General
Open Government Section

WMW/MAR/rho

¹We caution that we limit the disposition here to information you have specified in your request and submitted in the attachments thereto.

Ref.: ID# 26794

Enclosures: Submitted documents

cc: Mr. Leon Lawson Kendrick
TDCJ No. 358803
Ellis II Unit
Huntsville, Texas 77340
(w/o enclosures)